

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 08-047

Complainant: No. 1330010172A

Judge: No. 1330010172B

ORDER

The commission reviewed the complaint and accompanying documents filed in this matter, as well as the judge's response, and found no ethical misconduct on the part of the judge. Accordingly, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: July 1, 2008.

FOR THE COMMISSION

\s\ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on July 1, 2008.

This order may not be used as a basis for disqualification of a judge.

February 25, 2008

Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, AZ 85007

It has been brought to the attention of _____ has engaged in conduct warranting a referral to the Commission on Judicial Conduct. After a careful review, it is the belief of _____ conduct may have violated the Code of Judicial Conduct and should be investigated by the Commission. Therefore, pursuant to our obligation under E.R. 8.3 of the Rules of Professional Conduct, we are forwarding this information for your consideration.

Factual Background

_____ the *Arizona Republic* and *East Valley Tribune* ran news stories on the failure of _____ to enforce Proposition 100, which required courts to deny bail to persons, accused of serious crimes, who are in the country illegally. The media reported a decision by court employees to not ask defendants about their citizenship status. The stories also addressed _____ a defendant who was released and then allegedly committed another crime.

In response to those stories, _____ wrote a series of opinion columns that became increasingly critical of the _____

_____ These columns not only purported to defend the court's practice regarding the enforcement of Proposition 100, but also clearly demonstrated _____ personal animosity and judicial bias against _____

_____ has gratuitously used the media to make unfounded accusations against a duly elected public official by attacking his integrity and motivations. These attacks continue to this day.

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in a Commentary authored by _____ and published in the
Arizona Capitol Times _____ and an identical column published by the *East Valley*
Tribune, _____ referred to "divisive, unproductive finger-pointing and
blame-placing" that, in the context of the series of articles, was clearly directed at

in a "My Turn" column authored by _____ and published in
the *Arizona Republic* _____ and in a substantially similar _____ Commentary
published in the *Capitol Times* _____ made repeated inappropriate and
false statements, obviously intended to impugn the integrity of _____. She wrote:

_____ has several options other than to
make false accusations against the court commissioners and judges who are
following the law and the administrative order issued by the state Supreme
Court's chief justice on April 3.

The column stated that the options included appellate review of rulings, filing a comment to the
rule petition to establish Prop. 100 procedures, or asking the Legislature to enact a specific
burden of proof for Prop. 100 cases.

Prosecutors have not appealed a single Prop. 100 decision by our court.
Instead they've created a politically motivated controversy, using the media
to agitate the public and create political fodder for the uninformed. The
criticism is unfounded and unfair.

Proven illegal immigrants are being held without bond when facing serious
felony charges. Our data proves that. A recent sampling showed 350
defendants were held non-bondable. . . .

These public statements by _____ were made without regard for their accuracy
and served only to undermine the public's confidence in _____

in a Commentary authored by _____ and published in the
East Valley Tribune _____), and in a substantially similar column in the _____ issue
of *The Judicial Branch News* _____ inexplicably accused
of lying and manipulation. The *Tribune* column began:

Proposition 100 is being used as a weapon — not to hold proven illegal
immigrants accused of serious crimes without bond — but as a political
attack on Superior Court judges and commissioners.

_____ has held news conferences to
point an accusatory finger at the court for performing its duties according to
legal standards of the new law. He uses half-truths and manipulated data as
the basis of his accusations.

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It is interesting to note that at the time these comments were made, [redacted] was aware a study done by [redacted]. A review of 699 cases involving illegal immigrants charged with serious offenses revealed that only 6% were held without bond. These public statements by [redacted] were made without regard for their accuracy and served only to undermine the public's confidence in [redacted]. In addition, contrary to [redacted] assertions, appellate review of the Court's inaction has been sought by the [redacted]. Thus, notwithstanding [redacted] assertions to the contrary, a review of real cases supports the conclusion that criticism of the Court was not only fair, it was also accurate.

The column went on to explain the burden of proof issues when holding a person without bond. It also stated that the Legislature was considering passing a law to lower the burden of proof, and the Supreme Court was considering a rule change to improve procedures for handling Prop. 100 cases.

The Supreme Court invited comment on its proposed changes. [redacted] used this opportunity to continue the attack on the court. Statistics attached to the comments were a manipulatively disingenuous, selective snapshot.

The column then had several bulleted items pointing out perceived omissions or errors in the statistics, followed by the statement, "Data kept by the court, and made public weeks ago, shows marked differences from [redacted] numbers." The column also stated, "Skewed statistics are not the only misrepresentations [redacted] makes against the Superior Court," followed by two bulleted items explaining that [redacted] is not a 'race-based' court," and "Victims' rights are protected." The column concluded:

The political rhetoric and bickering does not contribute anything worthwhile to the administration of justice and has been extremely destructive to the collaboration between hardworking attorneys and judges who have tried in earnest to make the system work.

[redacted] the *Arizona Republic* published a feature story authored by columnist [redacted]. The story focused on the Spanish DUI court proceedings conducted by [redacted] but also mentioned the issue of bail for illegal immigrants. It had extensive comments from [redacted] including:

[redacted] believes [redacted] fights with her are mainly about politics, not about justice.

"It's so this guy can get his name in the paper and make a big name for himself," she said. "Say he's tough on crime, tough on illegal immigration and get into a higher office."

knows that is at a disadvantage in a public debate with
Not only because is ethically restrained from certain
comments, but because justice issues don't make for easy political points.
Defending the rights of unpopular persons or groups doesn't have the same
political ring as advocating for them to be locked up, said.

"It's about what fair is," "It's not about a steppingstone. When's
the last time you saw a judge run for office?"

The story then continued with defense of the court regarding the bail
issue and the Spanish-language proceedings. These public comments were obviously intended to
undermine the credibility of and to expose to public scorn. Such
comments are ethically forbidden when proffered by a judge of the Superior Court

Just recently, again publicly undermined the public's confidence in
in yet another public pronouncement on

issued a press release on that date which
questioned the judiciary, placing convicted illegal immigrants on probation.
announced that, in cooperation with federal officials, illegal aliens on probation were
being arrested and processed for deportation. had no involvement
in this announcement.

Later that day, issued a public statement which read:

In many of the cases discussed today by
cut a deal with the defendant to guarantee probation. A plea bargain is an
agreement The prosecutor
can appeal any sentence he thinks is unlawful.

As the at a time when Proposition is a very visible issue,
knew that the cases referred to were most likely pre-Proposition 100 cases. As
knows, had no information regarding a defendant's
immigration status prior to the enactment of Proposition 100. At the time these plea agreements
were entered into by there was no way for to ascertain
the immigration status of a defendant. statement appears to be a blatant attempt
to shift attention on this issue away from the court and to again portray
in a negative light.

These numerous public attacks on and
are beneath the dignity of the court and run counter to the Canons of Judicial Conduct.

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Applicable Canons

Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 4. A Judge Shall So Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations

A. Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

B. Avocational Activities. A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this code.

Analysis

A judge must maintain high standards of integrity and impartiality, which extends to her comments in the media. columns were not limited to commenting on legal issues but included numerous derogatory remarks about The unfair statements were written in advance by — did not simply make an inadvertent remark to a reporter. This deliberate pattern of conduct makes it particularly egregious.

In addition to the canons, Judicial Ethics Advisory Opinion 94-16 provides guidance on the limitations placed on a judge's speaking and writing:

Canon 4B permits judges to write, speak, teach, and engage in other extra-judicial activities about the law and the legal system. It also authorizes judges to write, lecture and speak on non-legal subjects as well. However, two caveats apply: First, judges must not let their speaking and writing cast doubt on their capacity to decide cases impartially; and secondly, the outside activity must not interfere with or detract from the dignity of the judicial office.

Advisory Opinion 95-04 similarly states:

Canons 2A and 4A require that any article which addresses a particular case be written in a manner which casts no reasonable doubts on the judge's

capacity to act impartially. Any article must promote public confidence in the integrity and impartiality of the judiciary and must not demean the judicial office.

And in Advisory Opinion 06-05, in answer to the question "May a sitting judge not campaigning for election or retention publicly express his or her views on disputed political or legal issues under the Code of Judicial Conduct?" the response by the Judicial Ethics Advisory Committee was "No."

By incorporating gratuitous personal attacks in writings, went beyond what is permitted under the Canons and clearly exhibited the appearance of impropriety.

The columns in Attachments 1 and 2 generally defended the Superior Court in response to criticism and explained new procedures being implemented. However, the columns ended by referring to "divisive, unproductive finger-pointing and blame-placing." Because the columns began by disputing allegation that Proposition 100 was not being enforced, one could infer that the "finger-pointing and blame-placing" comment was directed at

The columns in Attachments 3 and 4 addressed continuing allegations that the court was not enforcing Proposition 100. The columns stated that accusations were "false," and provided data that said proved that a higher number of defendants were held nonbondable. also explained the evidentiary hearing procedure. However, commented that "prosecutors" had "created a politically motivated controversy, using the media to agitate the public and create political fodder for the uninformed." Such language unfairly speculated that acted with improper motives. In addition, the language interjected politics into argument, when Canon 4 indicates that a judge's writings should be nonpolitical. Although some news stories did cover political elements of the debate, judicial office limited response to purely legal issues. Accusing of "political motivation" and "agitating the public" violates Canons 2A and 4A by disparaging and thereby casting doubt on the judge's integrity and impartiality.

Not long after columns ran, continued to criticize in her remarks to reported Comments about "this guy" making "a big name for himself" so he can "get into a higher office" were clearly a direct personal attack on . The general tone of the remarks was unprofessional, biased and demeaned the judicial office. apparently even indicated to the reporter that was ethically restrained from making certain comments, then proceeded to do so. Statements that question the political motivations of the fall within those ethical restraints and are inappropriate when a judge speaks to the press.

Her decision to send increasingly hostile columns to the media demonstrated a pattern of behavior that reflects poorly on and office. In addition, the columns and other comments to the media may have negatively impacted the public's perception of

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as well as the court system. A judge,
should be fostering faith in the criminal justice system, not undermining it. Therefore, I respectfully request that the Commission investigate this incident and take whatever action it deems appropriate.